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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.125 OF 2006

Commissioner of Central Excise ..Appellant.

V/s.

M/s.Shree Ram Steel Rolling Mills ..Respondent.

Mr.M.I.Sethna, senior counsel with A.S.Rao and S.D.Bhosale for appellant.

CORAM : F.I.REBELLO AND J.P.DEVADHAR, JJ.

DATED : 4TH OCTOBER, 2007.

P.C. :-

Appellant served a show cause notice cum demand dated 4th September, 1985 on the respondent, for the period between 1/8/1983 to 3/3/1985. The Commissioner of Central Excise by his order dated 27/10/1997 after noting various facts and contentions was pleased to hold that the assessee was not entitled to get the benefit of exemption under Notification No.208/83-CE dated 1/8/1983 prior to 14/12/1984. The learned Commissioner was pleased to hold that the charges levelled in the show cause notice on merits as well as on time bar would not stand and accordingly dropped the proceedings in respect of the show cause notice dated 4/9/1985.

2. The appellant herein preferred an appeal before the Tribunal and the Tribunal by its order dated 25th August, 2005 noted that the Commissioner observed that the notice did not invoke the proviso to section 11A for demanding duty beyond the period of six months. It also noted by the observations made in the order of the Commissioner that the Commissioner has confirmed the duty for the period of six months prior to the issuance of the show cause notice. The Tribunal thereafter, considering the proviso to section 11A observed that unless the revenue succeed in showing that the respondents were indulging in suppression, misstatement or fraud with an intent to evade payment of duty, longer period cannot be justifiably invoked against the respondents and consequently confirmed the order of the Commissioner and dismissed the appeal.

3. The question before us is whether the extended period could have been applied in the instant case. The extended period can be invoked only if the proviso was invoked. In the instant case, the show cause notice does not indicate that the proviso was invoked. The proviso requires that when the duty has not been paid, it must be by reason of fraud, collusion or wilful misstatement or suppression of facts in contravention of the rules with a view to evade the payment of duty. This fact was not stated in the show

cause notice. In other words, the respondents had no notice of the same. Merely invoking the provisions of section 11A without invoking the proviso would not extend the time. Considering the finding recorded by the Commissioner of Central Excise and also the Tribunal, in our opinion, the question of law as framed would not arise. Consequently, the appeal is dismissed.

(F.I.REBELLO, J.)

(J.P.DEVADHAR, J.)